

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 612

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Baker and Thrasher

SUBJECT: Special Risk Class/DROP

DATE: April 14, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/1 amendment
2.	Gizzi	Yeatman	CA	Favorable
3.	Wilson	Wilson	GO	Fav/CS
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill provides that certain Special Risk Class members who have a rank or equivalent rank of captain or below at the beginning of participation in Florida Retirement System Deferred Retirement Option Program (DROP), may participate in DROP for an additional 36 months beyond the 60-month period.

Members that choose to participate in DROP for the additional 36 months, at the conclusion of DROP participation, may not be employed, reemployed, or retained in a contractual capacity by the same employer from which they retired or terminated DROP participation, except for retention by the employer as a part-time or auxiliary officer if the retiree is serving on a voluntary basis and receives no more than \$1 per calendar year for services rendered directly for the employer.

The bill also states that any retiree or employer that violates these provisions will be jointly and severally liable for reimbursement to the Florida Retirement System (FRS) trust funds, and will cause the retiree's retirement application to be voided.

This bill substantially amends section 121.091 of the Florida Statutes.

II. Present Situation:

Florida Retirement System

The Florida Retirement System (FRS) was established by the Legislature in 1970 to consolidate then-existing state administered retirement programs for state and county employees and officers, teachers, judges, and highway patrol officers.¹ Membership in the FRS is compulsory for all state and county employees that work in regularly established positions; however, certain elected officials are permitted to withdraw from the FRS under s. 121.052(3), F.S. Cities and special districts as statutory entities are voluntary members of the FRS.²

FRS membership is broken down into five different classes: Regular, Special Risk (law enforcement, correctional, firefighters, correctional probation, forensic, and emergency medical services, and other designated occupations), Special Risk Administrative Support, Elected Officers, and Senior Management Service. The following table reflects the number of active FRS employees in 2009 by membership class:

Membership Class ³	Members
Regular Class	582,568
Special Risk Class	75,640
Special Risk Administrative Support Class	76
Senior Management Service Class	7,725
Elected Officers' Class	2,304

The FRS is composed of two programs: The Defined Benefit Program (FRS Pension Plan) and the Defined Contribution Program (FRS Investment Plan), formally known as the Public Employee Optional Retirement Program (PEORP). The term 'defined contribution' for the FRS Investment Plan means that employer *contributions* are defined; [whereas] in the FRS Pension Plan, the *benefit* is defined.⁴ Eligible new employees are automatically enrolled into the Pension Plan and are given five months to join the Investment Plan before they are defaulted into the Pension Plan. FRS employees are also given a one-time second election option during the course of their employment in which they are permitted to change their retirement plan.

Special Risk Class

As of January 30, 2009, the Florida Retirement System (FRS) Pension Plan had 75,640 Special Risk Class Members.⁵ The Special Risk Class includes employees who meet the eligibility

¹ Section 121.051, F.S.

² Department of Management Services, *Senate Bill 612 Analysis* at 1 (Jan. 28, 2010) (on file with the Senate Committee on Community Affairs) (stating that approximately 181 cities and 221 independent special districts in Florida have become members of the FRS as of June 30, 2009).

³ *Id.*

⁴ MyFRS *FRS Investment Plan Summary Plan Description*, (July 1, 2009) available at http://www.myfrs.com/imageserver/pdf/forms/frs_ip_spd.pdf (last visited on Feb. 24, 2010) [emphasis added]

⁵ Department of Management Services *Senate Bill 612 Analysis*, at 2 (Jan. 28, 2010) (on file with the Senate Committee on Community Affairs).

requirements found in s. 121.0515, F.S., and who are employed by an FRS employer as a law enforcement officer, firefighter, correctional officer, correctional probation officer, emergency medical technician, paramedic, youth custody officer, or who are in a specified professional health care or forensic position and spend at least 75 percent of their time performing duties involving inmate contact for the Department of Corrections or patient contact for the Department of Children and Family Services.

The Special Risk Class was created for employees who must, as an essential function of the position, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. As persons in such positions age, they might not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public, and their co-workers. Because of this, Special Risk Class members receive more credit toward retirement for each year of service and are eligible to receive normal unreduced benefits at the earlier attainment of twenty-five years' service in the class or age 55.⁶

The Special Risk Administrative Support Class consists of former Special Risk Class members that were moved, reassigned or reemployed in administrative support positions with a law enforcement, firefighting, correctional, or emergency medical care agency under the FRS. These members must maintain the certification required for their former Special Risk Class positions and are subject to recall to their former position.⁷

Deferred Retirement Option Program

The Deferred Retirement Option Program (DROP) was established in July of 1998, as an elective program available to all eligible members in the FRS Pension Plan, The Teachers' Retirement System (TRS), and The State and County Officers and Employees' Retirement System (SCOERS).⁸ Under DROP, an employee has the option to simultaneously retire and begin accumulating monthly retirement benefits while he or she still continues to work for an FRS employer up to 60 months from his or her normal retirement date or eligible deferral date.⁹

The employee's monthly retirement benefits under DROP are determined by the number of his or her years of service at the time DROP participation begins. As the member continues to receive a salary, his or her retirement benefits are deferred into an interest bearing account that includes cost-of-living adjustments. Once the DROP period is over, the member terminates covered employment and begins receiving regular monthly retirement benefits or a lump sum payment in addition to the accrued DROP benefit.¹⁰

⁶ *Id.* at 3(A Special Risk Class member can retire at the age of 55, or after 25 years of service, while a Regular Class member can retire at the age of 62, or after 30 years of service. A Special Risk Class member earns retirement credits at 3% of the Average Final Compensation (AFC) for each year of service, while a Regular Class member earns retirement credits at 1.6-1.68% of AFC for each year of service.).

⁷ *Id.*

⁸ Section 121.091(13)(a), F.S.

⁹ Department of Management Services *Senate Bill 612 Analysis*, at 2 (Jan. 28, 2010) (on file with the Senate Committee on Community Affairs). *See also* s. 121.091(13), F.S.

¹⁰ Section 121.091(13), F.S.

In order for an FRS employee to be eligible to participate in DROP, he or she must qualify for normal retirement based on age or years of service and must also be a vested FRS member.¹¹ For Regular, Elected Officers', and Senior Management Service Classes, this means the employee must be at least 62 years old or completed 30 years of service. A Special Risk Class member qualifies for normal retirement at the age of 55 or after 25 years of service.¹² With certain exceptions, FRS employees have a 12 month election window to become a DROP participant once he or she meets these qualification requirements.¹³ Elective officers and instructional personnel are permitted to defer their election to participate in DROP pursuant to ss. 121.091(13)(a)6. and (b)4., F.S.

In 2003, the Legislature enacted ch. 2003-260, Laws of Florida (L.O.F.), to allow certain FRS instructional employees to extend their DROP participation beyond the original 60 month limitation. Located in s. 121.091(13)(b)1., F.S., this exceptions provides that:

... members who are instructional personnel employed by the Florida School for the Deaf and the Blind and authorized by the Board of Trustees of the Florida School for the Deaf and the Blind, who are instructional personnel as defined in s. 1012.01 (2)(a)-(d) in grades K-12 and authorized by the district school superintendent, or who are instruction personnel as defined in s. 1012.01(2)(a) employed by a developmental research school and authorized by the school's director or if the school has no director, by the school's principal, may participate in DROP for up to 36 calendar months beyond the 60-month period.¹⁴

Pursuant to s. 121.091(13)(a)1., F.S., employees cannot participate in DROP if they are:

- A renewed member in an FRS-covered position after already retiring from a stated administered retirement system;
- A member or retiree of the FRS Investment Plan;
- A member or retiree of the State University System Optional Retirement Program;
- A member or retiree of the State Community College System Optional Retirement Program;
- A member or retiree of the Senior Management Service Optional Annuity Program;
- A senior manager employed by or retired from a non-state employer that chose to withdraw from FRS participation; or
- An elected official that chose to withdraw from FRS participation.¹⁵

Actuarial Soundness and Minimum Funding Standards

Article X, s. 14, of the State Constitution, requires public retirement benefits to be funded on a sound actuarial basis:

¹¹Department of Management Services, *Florida Retirement System Pension Plan (FRS: Deferred Option Retirement Option Program (DROP) Brochure* at 4 (July 2009) (on file with the Senate Committee on Community Affairs).

¹²Department of Management Services *Senate Bill 612 Analysis*, at 3 (Jan. 28, 2010) (on file with the Senate Committee on Community Affairs).

¹³Section 121.091 (13)(a)2., F.S.

¹⁴Section 121.091 (13)(b)1., F.S.

¹⁵See *supra* at note 11.

SECTION 14: State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.¹⁶

The “Florida Protection of Public Employee Retirement Benefits Act” located in part VII, of ch. 112 , F.S., provides minimum operation and funding standards for public employee retirement plans. The legislative intent of this Act is to “prohibit the use of any procedure, methodology, or assumptions, the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current tax payers.”¹⁷

III. Effect of Proposed Changes:

Section 1 amends s. 121.091, F.S., to provide that Special Risk Class members that are employed as law enforcement officers, correctional officers, or community-based correctional probation officers who have the rank or equivalent rank of captain or below at the beginning of participation in Florida Retirement System Deferred Retirement Option Program (DROP), may participate in DROP for an additional 36 months beyond the 60-month period.

Members that choose to participate in DROP for the additional 36 months, at the conclusion of DROP participation, may not be employed, reemployed, or retained in a contractual capacity by the same employer from which they retired or terminated DROP participation, except for retention by the employer as a part-time or auxiliary law enforcement officer if the retiree is serving on a voluntary basis and receives no more than \$1 per calendar year for services rendered directly for the employer.

If a retiree or employer violates these provisions, the retiree voids his or her application for retirement benefits and both the employer and the retiree shall be jointly and severally liable for reimbursement to the retirement trust fund, including the Florida Retirement System Trust Fund and the Public Employee Optional Retirement Program Trust Fund. This section does not apply to a retiree who is elected or appointed to an office by the Governor or by the Governor and Cabinet.

Section 2 provides a statement of important state interest.

Section 3 states that this bill shall take effect on July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁶ Art. X, section 14 of the Florida Constitution.

¹⁷ Section 112.61, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article X, s. 14, of the State Constitution, requires public retirement benefits to be funded on a sound actuarial basis.¹⁸

As discussed, below, the effect of this bill provides different benefits to similarly situated persons in the same retirement class. The consulting actuary has concluded that this presents a potential constitutional impairment in that persons in the same retirement class differentiated by rank alone would be ineligible for its benefits.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to a special actuarial study performed by Milliman Inc., the consulting external actuary to the Division of Retirement, the impact of these provisions are “shown as a cost/(savings) when compared to a baseline of 2009 valuation results as adjusted by 2009 House Bill 479.”¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Management Services has raised the following issues in their analysis of SB 612:

¹⁸ Art. X, section 14 of the Florida Constitution.

¹⁹ Milliman *Special Actuarial Study: DROP Extension for Law Enforcement* at 1 (March 1, 2010) (on file with the Senate Committee on Community Affairs).

- “Additional reporting or verification by employers would be required to identify law enforcement officers, correctional officers, or community-based correctional probation officers who would become eligible to extend their DROP. DROP participants are considered retired for benefit purposes; they do not accrue retirement service during DROP and are identified by their employers as DROP participants instead of by the membership class eligibility for the position held if not in DROP. This is the first time that a participant’s rank or job title would impact the benefits provided in a Class of membership.”
- “This bill does not require employer approval for the extension of DROP by participants in these positions. This would allow these DROP participants to change their specified termination date the employer was required to acknowledge without employer input about whether this decision aligns with the employer’s transition management plans.”
- “This bill could encourage other employees to seek similar benefits for extended DROP participation. Similar legislation has been filed in the past for district school board administrators and certain pre-kindergarten teachers. Other employee groups such as community nursing instructors have made inquiries about this benefit to help address shortages in that field. Because of the way DROP is funded, all FRS employers would pay for any impact to the DROP contribution rate.”
- “The ability to extend DROP participation has been sought by other employee groups or other employers as the provisions for extended DROP participation have become applicable to others. This liberalization of the benefit has been sought to attain greater parity between employee groups or employers instead [of] meeting short-term needs. Over time, changes in benefits can also be motivated by desire for parity versus critical need; the liberalization of exceptions to reemployment restrictions demonstrates these changes. If extended DROP participation continues to become more broadly available, there could be increased pressure placed upon the Legislature to create a longer, initial 96-month participation period for DROP.”
- “Since DROP participants are retired and no longer have a specific class affiliation, it would be difficult for the Division to determine which DROP participants are impacted by this bill. If this bill referred to positions otherwise covered by the Special Risk Class it would reflect the current DROP funding structure and reporting for these positions.”
- “SB 612 will not restrict the reemployment of employees who retire from one of the covered positions without participating in DROP.”
- “When a member’s retirement and DROP participation are voided due to a violation of FRS termination requirements, the time that they worked during DROP participation reverts to FRS creditable service. The difference between the DROP contribution rate paid during this time and the contribution rate for the membership class the employee would have been eligible for at the time must then be paid to the FRS, plus annually accruing interest, by the employer who facilitated the violation. Because there are no time limitations on the reemployment restrictions imposed by SB 612, employers could find themselves responsible for these costs plus multiple years of accrued interest.”
- “Under SB 612, the requirement that a retirement be voided if participants in one of these positions who extended DROP return to work with the same employer without an exception, does not have a time limit. There may be members who void their retirement multiple years after terminating from DROP. If these members’ DROP accumulation and intervening monthly benefits are not available, they would be required to commit current and possibly future income to repay this debt to the FRS Trust Fund. These members would not be

allowed to retire and begin drawing a monthly benefit until the amount owed for their voided retirement is fully paid.”

- Approximately 13,400 positions may be impacted by this bill, based on responses from the following counties: Bay County, Broward County, Calhoun County, Gilchrist County, Hillsborough County, Manatee County, Miami-Dade County, Okeechobee County, Orange County and Wakulla County.
- “This proposed bill violates Article X, Section 14 of the Florida Constitution ... [and] also establishes reemployment limitations that may not be applied equally to employees who retire from the same positions. This could possibly violate the equal protection clause of the U.S. Constitution which requires that persons similarly situated be treated alike.”²⁰

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on April 14, 2010:
Incorporates traveling amendment barcode 733196 into the CS.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²⁰ Department of Management Services *Senate Bill 612 Analysis*, at 6 (Jan. 28, 2010) (on file with the Senate Committee on Community Affairs)